

FILED 10 FEB 09 11:25 USDC-ORM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHRISTOPHER BARAN,

Petitioner,

v.

JEAN HILL,

Respondent.

Civ. No. 07-1411-CL

OPINION AND ORDER

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation ("R and R") [#41], and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner filed a MOTION TO SHOW CAUSE WHY FEDERAL HABEAS SHOULD BE ALLOWED TO PROCEED [#47] which I construe as objections to the R & R. Accordingly, I have reviewed the file of this case *de novo*. See 28 U.S.C. § 636(b)(1)(c); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).


Petitioner argues that his claim of ineffective assistance of counsel based on the failure to mount and pursue an insanity defense is bolstered because "the lost report of Dr. Stanilus has been recovered." (MOTION TO SHOW CAUSE WHY FEDERAL HABEAS SHOULD BE ALLOWED TO PROCEED, 2.) However, Dr. Stanilus' report was included in respondent's exhibit 126 and the report does not introduce new information not previously briefed by the parties. I conclude the R & R is correct.

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#41) is adopted. The petition (#2) is denied and this action is dismissed. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(2).

IT IS SO ORDERED.

DATED this 9 day of February, 2010.

A handwritten signature in black ink, reading "Owen M. Panner". The signature is written in a cursive, flowing style with a large initial 'O'.

OWEN M. PANNER
U.S. DISTRICT JUDGE